



Division of Purchases

One Capitol Hill | Providence, RI 02908 | (401) 574-8100
Nancy McIntyre, State Purchasing Agent

June 10, 2024

The Honorable Representative Joseph J. Solomon, Jr.
Chairperson, House Committee on Corporations
Rhode Island House of Representatives
82 Smith Street, Providence, RI 02903

**RE: House Bill No. 8344 – An Act Relating To State Affairs And Government --
Public-Private Partnership Infrastructure Program**

Dear Chairman Solomon,

Thank you for providing the Division of Purchases (Division) the opportunity to submit comments in response to House Bill No. 8344, which sets forth substantial requirements on public-private-partnership contracting. Overall, the Division would like to note the procedural uncertainty this bill will engender.

Although this new chapter is proposed beneath two Rhode Island Department of Transportation chapters of Title 42, it appears to be applicable to any State Department seeking a public-private agreement for a “design-build-finance-operate-maintain” facility or “design-build-operate-maintain” facility. To date, solicitations relating to public-private partnership agreements have been facilitated through the Division. Additionally, there are specific parameters established for eligible public works projects in the State Purchases Act not contemplated herein, including review and approval by the Architectural & Engineering Committee.

As written, this legislation exempts public-private partnership agreements from the State Purchases Act entirely but appears to employ the same procedural terms and processes under a different governance structure: the Special Public-Private Partnership Infrastructure Oversight Commission (Commission). There are no State government actors identified on the Commission, which has authority for approving both the Request for Proposal and associated contracts. No other contract the State solicits for or executes is subject to the control of non-State actors, and the Division notes that this could set a dangerous precedent for State contracting and potential conflicts of interest.

Additionally, page 6, lines 20-29 specifically exempt public-private partnership agreements from the standard competitive bid requirements set forth in the State Purchases Act. The legislation also requires a contracting Department to have its own procurement regulations for the facility. Creating distinct procurement requirements from the State Purchases Act could result in long-term unintended consequences for State contracting and create inequity and confusion around State



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processes. State procurements actions are oftentimes litigated, and consistency and precedent are cornerstones in upholding procurement actions.

Lastly, the definition of “qualified facility/facility” is ambiguous. It is unclear whether or not this could be interpreted to include roads or other horizontal construction. Subjecting these types of projects to the process outlined in the bill would need exhaustive review and consideration.

Today, the Department of Administration can delegate various degrees of procurement authority to a Department to facilitate the procurement process under R.I. Gen. Laws Chapter 37-2. The Division understands the unique requirements of public-private partnerships and endeavors to assist all agencies through the procurement process when they arise.

The Department appreciates the opportunity to share its concerns over this legislation with the Committee. If there are any questions, please feel free to contact my office at your convenience.

Sincerely,

Amanda Rivers
Deputy Purchasing Agent
Division of Purchases

cc: The Honorable Members of the House Committee on Corporations
Lou Mansolillo, Clerk
Nicole McCarty, Chief Legal Counsel to the Speaker of the House